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271311Z Oct 05

UNCLAS SECTION 01 OF 04 PARIS 007355

SIPDIS

FROM USOECD

STATE FOR EUR/ERA, EB/IFD/ODF-LFCONNELL,
EB/IFD/OIA-PBROWN
DOC FOR ELENZ
DOJ FOR MMENDELSON
TREASURY FOR STVARDEK AND DRYSDALE
PASS TO EX-IM CFIRESTONE

SENSITIVE

E.O. 12958:N/A

TAGS: [EFIN](#) [EINV](#) [ETRD](#) [EXIM](#) [OECD](#)

SUBJECT: OECD/EXPORT CREDIT: STRENGTHENED ANTI-BRIBERY
ACTION STATEMENT FACES DIVERGENT VIEWS

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SUMMARY

1. (SBU) Summary: Members of the Organization for Economic Cooperation and Development (OECD) working group on export credits and credit guarantees (ECG) met October 10 and 11 in Paris to consider proposals to enhance the November 2000 Action Statement on Bribery and Officially Supported Export Credits. The Chairman of the OECD Working Group on Bribery (WGB) and several members of the WGB management group (US, France, Sweden) also attended. ECG members, who expressed divergent views on key aspects of the Statement, agreed to the OECD Secretariat's offer to prepare a draft reflecting the information and views expressed in the talks. Germany, Belgium, Czech Republic, and Japan were among those least interested in a robust new Action Statement. The Secretariat's strong draft statement (attached at para. 6), distributed October 21, provides a favourable starting point for further negotiations, which will culminate in the ECG's semi-annual plenary session November 14-18. End summary.

TI Presents a Strong Proposal

2. (U) Representatives from Transparency International (TI), who joined ECG members the morning of October 10, made a strong presentation on the need for export credit agencies (ECAs) to take active antibribery measures, outlining a broad range of steps which built on those offered in the U.S. proposal circulated to the ECG via the OECD on September 2. Specifically, TI proposed strengthening the U.S. proposal by including a requirement that exporters and applicants seeking ECA support disclose agents' names, addresses, commissions, services performed, bank account receiving the commission, connections between the agent and public officials in the buyer's country, and a statement as to the reasonableness of the amount of commission. [The U.S. proposal notes that disclosure of agents and their commissions may be required, but does not set a firm requirement or further detail further information required.] TI also proposed that ECG member countries develop and implement a debarment system for excluding companies previously engaged in bribery from receiving export credit agency (ECA) support and that they encourage ECAs in non-ECG member countries to adopt measures outlined in the strengthened Action Statement.

New Canadian Proposal Better Than the Germans'
(But Still Not Good)

3. (U) A German/Belgian/Czech proposal presented in 2004, which the U.S. had found lacked sufficient concrete measures, was the least progressive proposal discussed. A new Canadian proposal took a middle position between that proposal and the U.S. proposal. The Canadian proposal had a useful provision on illustrative requirements of measures that companies previously debarred for bribery could take to re-gain eligibility for export credits, including replacing individuals who had been involved in bribery, adopting an effective anti-bribery program, and submitting to an

audit and making its results available. However, the Canadian proposal also omitted some key elements of the U.S. proposal, such as disclosure of agents/commissions, and references to applicants.

Key Issues: Agents, Due Diligence, Reporting, Debarment

14. (U) Despite helpful explanations from OECD's export credit and legal staff on the rapid evolution and strengthening of international anti-bribery law and practice, comments reflected a wide range of opinion. An attempt by the OECD Secretariat to base plenary discussion on the U.S. proposal elicited wide opposition and was dropped. Given the absence of consensus, the Chair solicited members' views for inclusion in an OECD Secretariat draft Action Statement on four areas:

- (1) selection by export credit agency (ECA) clients of agents and disclosure of agents' commissions;
- (2) ECA conditions for applying enhanced due diligence;
- (3) ECA reporting to authorities of possible bribery; and
- (4) ECA measures, such as debarment, in event past bribery by ECA clients.

Divergent Views Leave Outcome in Doubt

15. (SBU) Discussion revealed some members strongly resistant to commit to any concrete measures. This group included Germany, Belgium, the Czech Republic, Austria, Poland, Spain, Turkey and especially Japan. The U.S. consistently presented the practical need for and benefits from its proposals in each area and found some support, notably from the Netherlands, the UK, Switzerland, Sweden, Finland, and Australia. In the middle were Canada (although closer to the first group), Denmark, France, and Korea. Italy and Mexico were silent, while Portugal and Slovakia were absent. In a meeting between the ECG bureau and the WGB management group, USDel to the WGB warned that failure by the ECG to enhance the Action Statement risked work being transferred to the WGB. Supporting USDel, the WGB Chairman, Mark Pieth, noted that the WGB is building up a "case law" type approach through recommendations in the WGB's peer review process. Through this process, the WGB has made a series of specific recommendations for enhancements to specific members' export credit policies. The WGB's October 18-20 meeting (septel forthcoming) briefly reviewed work in the ECG and encouraged delegations to ensure they coordinate with their ECG counterparts.

16. (SBU) The Secretariat's draft action statement, distributed October 21, includes key provisions of the U.S. proposal, along with some positive elements of the Canadian proposal and suggestions made by other delegations such as the Swiss. Comment: While it remains unclear whether a consensus document with meaningful improvements over the 2000 Statement will gain approval, the Secretariat's strong draft statement (para. 7) provides a favourable starting point for further negotiations. End comment.

17. (U) Following is the Secretariat draft scheduled to be considered in the ECG plenary meetings the week of November 14:
Begin quote.

DRAFT 2005 ACTION STATEMENT ON BRIBERY AND OFFICIALLY SUPPORTED EXPORT CREDITS

In recognition of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (hereafter the Anti-Bribery Convention) and the 1997 Revised Recommendation of the Council on Combating Bribery in International Business Transactions (hereafter the 1997 Recommendation)(1), the Members of the OECD Working Party on Export Credits and Credit Guarantees (ECG) agree:

1) Combating bribery in international business transactions is a priority issue and the ECG is the appropriate forum to ensure the implementation of the Anti-Bribery Convention and the 1997 Recommendation in respect of international business transactions benefiting from official export credit support.

2) To take appropriate measures (2) to deter bribery (3) in international business transactions benefiting from official export credit support, including:
a) Informing applicants and exporters requesting support about the legal consequences of bribery in

international business transactions under its national legal system including its national laws prohibiting such bribery.

b) Requiring applicants and exporters to provide an undertaking/declaration that they maintain appropriate (4) anti-bribery controls and that neither they, nor anyone acting on their behalf, (e.g. agents) have been engaged or will engage in bribery in the transaction.

c) Requiring applicants and exporters to disclose occurrences, within a [xx] year period preceding the application, of (i) any debarment of the exporter, or any subsidiary or affiliated entity (5), by the World Bank or any other multilateral financial institution, or any government entity, as a result of having been engaged in bribery, and (ii) any conviction, charge, or civil or administrative determination, penalty, order or settlement involving the exporter, or any subsidiary or affiliated entity, for violations of laws against bribery of foreign public officials of any country.

d) Requiring that applicants and exporters agree to disclose, upon demand: (i) the identity of persons acting on their behalf in connection with the transaction, and (ii) the amount and purpose of commissions and fees paid to such persons.

e) Requiring, for medium and long-term transactions (6) with a total contract value of SDR [xx] million or more with a public sector buyer in a country where risk of bribery and corruption is deemed to be relatively high (7), that applicants and exporters disclose: (i) the identity of persons acting on their behalf in connection with the transaction, and (ii) the amount and purpose of commissions and fees paid to such persons.

f) Undertaking enhanced due diligence if the Member becomes aware that the applicant, exporter, or any subsidiary or affiliated entity of such exporter has, within a [xx] year period preceding the application, been: (i) debarred by the World Bank or any other multilateral financial institution or any government entity as a result of having been engaged in bribery, (ii) found guilty in a court, criminally charged, or the subject of a civil or an administrative determination, penalty, order or settlement, for violation of laws against bribery of foreign public officials of any country; or if they have reason to believe that bribery may be involved in the transaction.

g) Developing and implementing procedures to disclose to their law enforcement authorities instances of credible evidence of bribery in the case that such procedures do not already exist.

h) Taking preventive and corrective actions that are appropriate given the specific circumstances of the transaction if there is credible evidence that bribery was involved in the award of the export contract, including: refusing to approve credit, cover or other support and, where support has already been provided, denying payment or indemnification or seeking refund of sums provided.

i) Developing and implementing procedures to deal with companies that have been convicted of bribery in order to ensure that support is not provided to any company that has not taken appropriate internal corrective measures (8) to deter further bribery.

3) The application by Members of the measures set out in Paragraph 2 in no way mitigates the responsibility of the exporter and other parties in transactions benefiting from official support to: (i) comply with all applicable laws and regulations, including national provisions for combating bribery of foreign public officials in international business transactions, or (ii) provide the proper description of the transaction for which support is sought, including all relevant payments.

4) To continue to exchange information on how the Anti-Bribery Convention, the 1997 Recommendation and the measures listed in Paragraph 2 above are being taken into account in Members' official export credit systems.

5) To continue to collate, map and review the information exchanged with a view to: (i) ensuring that functional equivalence exists in respect of the practical application by Members of the measures set out in Paragraph 2 above, and (ii) considering further steps to combat bribery in respect of transactions

benefiting from official export credit support.

6) To continue to publish the results of the information exchange and to consult on a regular basis with appropriate stakeholders.

Footnotes:

(1) Article 12 of the Anti-Bribery Convention provides for monitoring and follow-up to promote the full implementation of this Convention. The OECD Working Group on Bribery in International Business Transactions considers that insofar as officially supported export credits is concerned, the appropriate forum is the OECD Working Party on Export Credits and Credit Guarantees (ECG); the ECG reports progress to the Working Group on Bribery.

(2) These measures would be realized in accordance with the legal system of each Member country taking into account its specific judicial instruments and institutions to implement its penal laws and are not prejudicial to the rights of any parties not responsible for the illegal payments.

(3) As defined in the Anti-Bribery Convention.

(4) Some small- and medium-sized enterprises may have less detailed anti-bribery controls in comparison to those maintained by e.g. large, multinational corporations.

(5) For the purposes of this Statement, "affiliated entity" means (a) any company that holds, directly or indirectly, a majority of the voting stock of the company; and (b) any other company the majority ownership of whose stock is held by the company described in (a).

(6) For the purposes of this statement, any transaction with a repayment term of two years or longer.

(7) For the purposes of this Statement, "countries where the risk of bribery and corruption is deemed to be high" are countries with a score of three or lower on Transparency International's Corruption Perception Index.

(8) Such measures could include: replacing individuals that have been involved in bribery, adopting an effective anti-bribery program, submitting to an audit and making the results of such audit available.

End Quote.

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